



Commonwealth of Kentucky

MASTER AGREEMENT

IMPORTANT

Show Doc ID number on all packages, invoices and correspondence.

Doc Description: Treated Sodium Chloride		
Doc ID No: MA 605 1400000265 1	Proc Folder: 2957321	
Procurement Type: Standard Goods		
Effective Date: 2013-07-22	Expiration Date: 2014-04-30	Not To Exceed Amount
Administered By: MICHAEL WILLIAMS JR		Cited Authority: FAP111-35-00-G
Telephone: 502-564-4556		Issued By: Jennifer Houchin
VENDOR CARGILL INC DEICING TECHNOLOGY TECHNOLOGY 24950 COUNTRY CLUB BLVD STE 450 NORTH OLMSTED OH 44070-5333 US		

Line	CL Description	Delivery Days	Quantity	Unit Issue	Unit Price	Contract Amt	Total Price
1	Treated Rock Salt - District 1	0	0.00	TON	86.94000	0.00	0.00

Extended Description

Treated rock salt for use in Highway District 1

Vendor Rep: Deseree Caver

Vendor PH: 800-600-7258

Vendor Email: Deseree_Caver@gargill.com

Line	CL Description	Delivery Days	Quantity	Unit Issue	Unit Price	Contract Amt	Total Price
2	Treated Rock Salt - District 2	0	0.00	TON	78.90000	0.00	0.00

Extended Description

Treated rock salt for District 2

Line	CL Description	Delivery Days	Quantity	Unit Issue	Unit Price	Contract Amt	Total Price
3	Treated Rock Salt - District 3	0	0.00	TON	84.21000	0.00	0.00

Extended Description

Treated rock salt for District 3

Line	CL Description	Delivery Days	Quantity	Unit Issue	Unit Price	Contract Amt	Total Price
4	Treated Rock Salt - District 4	0	0.00	TON	76.87000	0.00	0.00

Extended Description

Treated Rock Salt - District 4

Line	CL Description	Delivery Days	Quantity	Unit Issue	Unit Price	Contract Amt	Total Price
5	Treated Rock Salt - District 5	0	0.00	TON	65.36000	0.00	0.00

Extended Description

Extended Description

Treated rock salt for District 5

Line	CL Description	Delivery Days	Quantity	Unit Issue	Unit Price	Contract Amt	Total Price
6	Treated Rock Salt - District 6	0	0.00	TON	74.03000	0.00	0.00

Extended Description

Treated rock salt for District 6

Line	CL Description	Delivery Days	Quantity	Unit Issue	Unit Price	Contract Amt	Total Price
7	Treated Rock Salt - District 7	0	0.00	TON	75.77000	0.00	0.00

Extended Description

Treated rock salt for District 7

Line	CL Description	Delivery Days	Quantity	Unit Issue	Unit Price	Contract Amt	Total Price
8	Treated Rock Salt - District 8	0	0.00	TON	88.66000	0.00	0.00

Extended Description

Treated rock salt for District 8

Line	CL Description	Delivery Days	Quantity	Unit Issue	Unit Price	Contract Amt	Total Price
9	Treated Rock Salt - District 9	0	0.00	TON	72.98000	0.00	0.00

Extended Description

Treated roack salt for Dsitrcit 9

Line	CL Description	Delivery Days	Quantity	Unit Issue	Unit Price	Contract Amt	Total Price
10	Treated Rock Salt - District 10	0	0.00	TON	80.94000	0.00	0.00

Extended Description

Treated rock salt for District 10

Line	CL Description	Delivery Days	Quantity	Unit Issue	Unit Price	Contract Amt	Total Price
11	Treated Rock Salt - District 11	0	0.00	TON	95.99000	0.00	0.00

Extended Description

Treated rock salt for District 11

Line	CL Description	Delivery Days	Quantity	Unit Issue	Unit Price	Contract Amt	Total Price
12	Treated Rock Salt - District 12	0	0.00	TON	82.78000	0.00	0.00

Extended Description

Treated rock salt for District 12

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Section 1—Specifications

1.00—Specifications of Commodity and/or Service Requirements

SCOPE OF CONTRACT – Treated Sodium Chloride (Rock Salt)

Establish a Master Agreement for the Purchase of treated Sodium Chloride (Rock Salt) by the Kentucky Transportation Cabinet for each of its Maintenance Storage Facility locations within each District. This treated rock salt shall be used as a deicer for roadway maintenance in the Department of Highways Snow and Ice Control Program.

The unit bid price quoted will be F.O.B. to the designated delivery point and will remain firm during the term of the Master Agreement.

MATERIAL REQUIREMENTS

The Sodium Chloride will meet the Kentucky Transportation Cabinet, Department of Highways Standard Specifications for Road and Bridge Construction, Edition of 2012, Section 825.

A link to the Standard Specifications can be found at:

<http://transportation.ky.gov/Construction/Pages/Kentucky-Standard-Specifications.aspx>

The *treated* sodium chloride shall be the same rock salt as stated above, treated with a combination of magnesium chloride and a corrosion resistant product in accordance with the specifications contained herein. The chemical needed for anti-caking is not required for treated salt.

The treatment method must allow for a completely uniform treatment of the sodium chloride, by the Vendor, before the treated sodium chloride is delivered to any of the Maintenance Storage Facilities. The treatment process for the sodium chloride must follow all federal, state and local laws and regulations.

The Vendor shall thoroughly mix a maximum of eight (8) gallons of corrosion inhibited, liquid magnesium chloride per ton of salt. The Vendor will ensure a consistent mix (i.e. via a spray system, pugmill, conveyor) to allow for maximum coverage of the liquid onto the sodium chloride. Loader mixing and stockpile injection methods are not acceptable practices for mixing the liquid material. Vendor must specify the mixing method in the bid.

Mixing Method: Screw Mixer

The liquid product to be mixed with the sodium chloride must exhibit corrosion resistance in accordance with the standards of the Pacific Northwest Snowfighters (PNS) Association, as provided below. This product must be actively marketed and sold as a treatment for sodium chloride stockpiles, and must provide for some or all of the following benefits related to deicing:

- Increased corrosion resistance over untreated sodium chloride.
- Increased penetration of sodium chloride into snow and ice pack.
- Reduced bounce and scatter of sodium chloride, from the highway.
- Increase in the residual effects of sodium chloride applications.

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Increase in the effective temperature range of sodium chloride.

The treatment must allow for safe and effective use of the sodium chloride in conventional sodium chloride application equipment commonly placed on retrofit trucks. When treated according to the manufacturer's instructions and at the designated application rate, the treated sodium chloride product shall result in no leaching, and shall not freeze nor clump in storage or during application.

The liquid magnesium chloride and corrosion inhibiting product used shall have been tested and be a proven brand that has been on the market and sold for at least one winter season. Vendor shall submit official testing data and literature that verifies the product meets specifications. Vendor shall submit any samples upon request, at no cost to the Department.

Deliver the treated sodium chloride in a free-flowing, usable condition, free from lumps and foreign material. Product that does not meet specified conditions at the time of the delivery will not be accepted and will be removed by the Vendor at no cost to the Department.

Trucks delivering the finished product shall have the entire cargo area completely covered by a waterproof tarpaulin or similar sheeting material. Torn or ripped covers may be cause for rejection of the shipment.

SAMPLING, TESTING, AND COMPLIANCE

Sampling as delivered will not be required, however, the Department reserves the right to take random samples and test any material when delivered to the designated delivery point. The Department also reserves the right, at its discretion, to sample and test any material at the terminal site or from the barge site prior to being loaded onto trucks.

When the Department chooses to take random samples and the samples fail to meet the specified conditions; the Department may require the removal of the material by the Vendor at no cost to the Department.

When weather conditions dictate that material which does not meet specified conditions must be used, or when otherwise it is in the best interest of the Cabinet to use the material, it may be accepted at a reduction in the contract bid price.

Such reduction will be between five percent (5.0%) and fifty percent (50.0%) depending on the degree of noncompliance as determined by the Division of Materials and the Division of Maintenance in consultation with the respective District personnel.

The reduction will apply to the quantity of material represented by the failing sample. The Vendor will process any adjustments due under the above conditions by issuing a credit memorandum or a revised invoice showing the adjustment to the affected purchasing entity and to the attention of the bookkeeper.

METHOD OF MEASUREMENT

Weighing will be over scales with a certification for the current year and will be by personnel authorized by the Vendor. Scale weigh personnel are responsible for the following:

1. Compliance to contract quantity.
2. Entry of accurate weights on weight slips.

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3. Adherence to road weight limits as prescribed by law.

The names of the weigh personnel will be filed with each respective Highway District Office. Personnel from the Department of Highways may be substituted for Vendor weigh personnel when necessary. The Department reserves the right to spot-check truck loads or truck-trailer loads for weight conformance to the weight shown on the weight slip or invoice (including tare weight if it is deemed advisable). Upon direction by authorized personnel, the truck will proceed to the nearest scales for such weight determination.

The Vendor will abide by the weight limits as provided by Kentucky law.

Upon the receipt of the award of a Master Agreement, the successful Vendor will provide the Department of Highways with a listing of all terminals and shipping point locations from which treated sodium chloride will be delivered. Failure to provide this list within thirty (30) days of the award of a Master Agreement may result in the cancellation of the Master Agreement.

The Department will not accept shipping point locations as approved sites that do not have paved pads for salt storage and that do not have the capabilities for salt stored in a stockpile on the pad to be covered. Failure to provide shipping point locations that meet with the approval of the Department may result in the cancellation of the Master Agreement.

Section 2—Terms and Conditions of the Master Agreement

2.00—Scope of the Contract

The KYTC Division of Purchases issues this Master Agreement for: Treated Sodium Chloride

2.01—Contract Components and Order of Precedence

The Commonwealth's acceptance of the offer indicated by the issuance of an Award by the KYTC Division of Purchases shall create a valid Master Agreement consisting of the following:

1. The written Master Agreement between the Parties;
2. Any Addenda to the Solicitation;
3. Any provisions of the Solicitation and all attachments thereto;
4. The Bidder's response to the Solicitation, and
5. The Kentucky Revised Statutes KRS 45A.

In the event of an inconsistency between provisions of the solicitation, the inconsistency shall be resolved by giving precedence in the following order: (a) the Specifications; (b) other provisions of the Solicitation, whether incorporated by reference or otherwise; (c) Contract or Master Agreement Terms and Conditions; (d) FAP 110-10-00 – General Conditions and Instructions for Solicitations and Contracts.

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2.02—Initial Contract Period

The Master Agreement will be in effect upon award and extend through April 30, 2014.

2.03—Optional Renewal Period

This Master Agreement may be extended at the completion of the initial contract period for two (2) additional one-year periods. This extension must have the written approval of the vendor and the KYTC Division of Purchases. The Commonwealth of Kentucky reserves the right to renegotiate any terms and/or conditions as may be necessary to meet requirements for the extended period. The vendor will be advised of any proposed revisions prior to the renewal periods. In the event proposed revisions cannot be agreed upon, either party shall have the right to withdraw without prejudice from either exercising the option or continuing the contract in an extended period.

2.04—Divisions/Agencies to Be Served

This contract shall be for use by the following Divisions/Agencies of the Kentucky Transportation Cabinet:

Division of Maintenance and Districts 1-12

No shipments or services are authorized until an official Delivery Order has been fully processed by an authorized agency.

2.05—Quantity Basis of Contract

This Master Agreement has no guarantee of any specific quantity, and the State is obligated only to buy that quantity which is needed by its agencies.

2.06—Exception to Required Use of Contract

The establishment of this Master Agreement is not intended to preclude the use of similar products when requested by the agency. The Commonwealth of Kentucky reserves the right to acquire large requirements through other competitive processes.

2.07—Basis of Price Revisions

PRICE ADJUSTMENTS: Unless otherwise specified, the prices established by the Master Agreement shall be firm for the contract period subject to the following:

A. **Price Increases:** A price increase will not be allowed during the first six (6) months of the contract. Only one price increase will be allowed during the contract period. The price increase must be based on industry wide price changes. The contract holder must request in writing a price increase at least thirty (30) days prior to the effective date, and shall provide firm proof that the price increase(s) is justified. The

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KYTC Division of Purchases may request additional information or justification. If the price increase is denied, the contract holder may withdraw from the contract without prejudice upon written notice and approval by the KYTC Division of Purchases. Notice of withdrawal must be provided a minimum of forty-five (45) days prior to the effective date.

B. Price Decreases: The contract price shall be reduced to reflect any industry wide price decreases. The contract holder is required to furnish the KYTC Division of Purchases with notice of any price decreases as soon as such decreases are available.

C. Extended Contract Periods: If the contract provides for an optional renewal period, a price adjustment may be granted at the time the contract is renewed, subject to price increase justification as required "A. Price Increases". One (1) additional price increase may be granted during the extended contract period. This price increase will not be allowed during the first six (6) months of the extended contract period and will be subject to the conditions in "A" above.

2.08—Addition or Deletion of Items or Services

The KYTC Division of Purchases reserves the right to add new and similar items, with the consent of the vendor, to the contract. If an addition is agreeable to both parties, the KYTC Division of Purchases will issue a Modification. Until such time as the vendor receives a Modification, the vendor shall not accept Delivery Orders from any agency referencing such items or services.

2.09—Changes and Modifications to the Contract

During the period of the contract, a modification shall not be permitted in any of its conditions and specifications, unless the contractor receives electronic or written approval from the KYTC Division of Purchases. If the contractor finds at any time that existing conditions make modification in requirements necessary, the contractor shall report the matter promptly to the KYTC Division of Purchases for consideration and decision. All contract modifications shall be subject to the provisions of 200 KAR 5:311.

2.10—Equipment

All equipment must be new and current model(s). The Commonwealth recognizes the rapid advancement of technology. If the vendor can provide new equipment of advanced technology after the award of the contract, the Commonwealth and the bidder may choose by mutual agreement to install such equipment. The price of the new technology equipment cannot exceed the cost of the award contract.

2.11—Basis of Shipment

All shipments shall be F.O.B. Destination to the receiving agency. The vendor shall be fully responsible for all shipments and freight charges involved to the ordering agency. The responsibility for filing freight claims lies with the vendor.

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2.12—Notices

Unless otherwise instructed, all notices, consents, and other communications required and/or permitted by the Master Agreement shall be in writing.

After the Award, all programmatic communications are to be made to the Agency Contact Person listed below with a copy to the Division of Purchases.

Michael Williams
Division of Maintenance
Kentucky Transportation Cabinet
Phone: 502-564-4556
E-mail: Michael.Williams@ky.gov

With copy to:

Jennifer Houchin, CPPB
Division of Purchases
Kentucky Transportation Cabinet
Phone: 502-564-4630
E-mail: Jennifer.Houchin@ky.gov

After the Award, all communications of a contractual or legal nature are to be made to the KYTC Division of Purchases.

2.13—Deliveries

Complete the delivery of the ordered quantities of the treated Sodium Chloride per the designated time periods. Treated sodium Chloride shall only be delivered upon receipt of delivery order.

The Chief District Engineer, the Director of the Division of Maintenance, or their authorized agent, may issue Delivery Orders by telephone, telegraph, fax, or mail. Delivery Orders placed in a manner other than hard copy will be confirmed on hard copy.

The minimum order for each delivery will be twenty-two (22) tons. Include the Delivery Order Number on all delivery tickets.

Notify each Department location of the delivery times a minimum of twenty-four (24) hours prior to delivery. Failure to give such notice may result in the Vendors' truck having to wait for the availability of personnel for unloading.

Provide a signed certification to cover each Delivery Order issued, stating compliance of the material with all of the requirements quoted within these Terms and Conditions. Indicate the point of delivery and the actual quantity delivered on the certification. Submit three (3) copies of the certification to the designated receiving agent and one (1) copy to the Department of Highways, Division of Materials, 1227 Wilkinson Boulevard, Frankfort, Kentucky, 40601. Show the Transportation Delivery Order Number on the certification.

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If it is found that proper quality control of the product has not been exercised; the privilege of routine acceptance by certification will be revoked.

In the event any delivery, including vehicle and load, exceeds said weight limits or the weight limit provided for by a special permit issued by the Cabinet, the Cabinet may refuse to accept delivery of that quantity which is in excess of the legal limit.

In the event of extreme winter storm conditions, the Department of Highways reserves the right to increase or decrease quantities of treated sodium chloride, at the contract bid price to meet the demands of the removal of snow and ice from highway pavements.

Delivery Orders for treated Sodium Chloride (Rock Salt) are subject to the aforementioned Terms and Conditions and will be completed within the Guaranteed Delivery Period.

The bidder guarantees complete delivery of all requested items within 6 calendar days after receipt of delivery order.

In the event the Vendor fails to complete the delivery of the quantities within the guaranteed delivery period, the Vendor agrees and further authorizes KYTC to deduct a 1% per calendar day penalty from the total invoice for each day beyond the delivery.

The Vendor will not be held responsible for failure to deliver if the failure is due to acts beyond their contract, such as flood or tornado. The Vendor will immediately submit written proof to the Director of the Division of Maintenance and the Director of Division of Purchases that the failure to deliver was beyond their control.

2013 – 2014 Winter Season Guaranteed Treated Salt Tonnage Purchases

-0- Tons guaranteed for delivery.

During abnormal winter storm conditions when inventories of treated Sodium Chloride at various District locations may be low, it may become necessary to prioritize deliveries being made by the Vendor. The Director of the Division of Maintenance will assume the responsibility of directing the Vendor to specific destination points for the delivery of treated Sodium Chloride. In the event this situation occurs, the Vendor will be responsible for conveying this directive to their terminal manager and to the trucking company hauling the treated Sodium Chloride for them.

Should the Vendor fail to make deliveries in accordance with these Terms and Conditions, the Cabinet may exercise the option of canceling the Master Agreement and purchase the quantity of material not furnished by the Vendor from another source of supply. All costs and expenses in excess of the stipulated contract amounts will be charged to the defaulting Vendor and may be deducted from any money due the Vendor at the time of the default.

2.14—Inspection

All supplies, equipment and services shall be subject to inspection or tests by the Commonwealth prior to acceptance. In the event supplies, equipment or services are defective in material or workmanship or otherwise not in conformity with specified requirements, the Commonwealth shall have the right to reject

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the items or services or require acceptable correction at the vendor's expense.

2.15—Invoices

Invoices, if required, shall be prepared and transmitted to the agency receiving the goods or services. One copy shall be marked "original" unless otherwise specified. Each invoice shall contain at least the following information:

Contract and order number
Item numbers
Description of supplies or services
Sizes
Quantities
Unit prices
Extended totals

2.16—Payments

A bill shall be paid within 30 working days of either the receipt of correct invoice, or receipt of goods or services in satisfactory condition. A penalty payment of one percent (1%) per month shall be added to the amount due the vendor for each full or partial month that the payment exceeds 30 working days. As an incentive for earlier payment, bidders for state contracts are encouraged to offer discounts for payments made in less than the prescribed 30 days.

2.17—Post Contract Agreements

The Master Agreement shall represent the entire agreement between the parties. Prior negotiations, representations, or agreements, either written or oral, between the parties hereto relating to the subject matter hereof shall be of no effect upon this contract. The Commonwealth shall not be required to enter into nor sign further agreements, leases, company orders or other documents to complete or initiate the terms of the contract. Any such documents so obtained will be non-binding on the State and be cause for breach of contract.

2.18—Service Performance

All services performed under contract shall be in accordance with the terms and conditions of the contract. It will be the agency's responsibility to ensure that such services rendered are performed and are acceptable.

The relationship between the State and the Contractor is that of client and independent Contractor. No agent, employee, or servant of the Contractor or any of its subcontractors shall be or shall be deemed to be an employee, agent, or servant of the State for any reason. The Contractor will be solely and entirely responsible for its acts and the acts of its agents, employees, servants and subcontractors during the performance of this Contract.

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Deviations of services performed will not be made without the written approval of the KYTC Division of Purchases. Problems that arise under any aspect of performance should first be resolved between the vendor and the agency. If such problems and/or disagreements cannot be resolved they should be referred to the KYTC Division of Purchases for mediation.

2.19—Assignment

The vendor shall not assign this Master Agreement in whole or in part to another vendor at any time during the initial or optional renewal terms of the contract, without the consent, guidance and approval of the Commonwealth. Any assignment hereunder entered into, subsequent to the execution of the contract with the prime vendor, must be annotated and approved by the Commonwealth. Any purported assignment without this consent shall be null and void.

2.20—Termination of Contracts

A contract may be terminated for default by the vendor, for the convenience of the Commonwealth, or for lack of appropriation in accordance with 200 KAR 5:312.

2.21— Endorsements

The Contractor shall not refer to the Award of Contract in commercial advertising in such a manner as to state or imply that the firm or its services are endorsed or preferred by the Commonwealth of Kentucky.

2.22— Registration with the Secretary of State by a Foreign Entity

Pursuant to KRS 45A.480(1)(b), an agency, department, office, or political subdivision of the Commonwealth of Kentucky shall not award a state contract to a person that is a foreign entity required by [KRS 14A.9-010](#) to obtain a certificate of authority to transact business in the Commonwealth (“certificate”) from the Secretary of State under [KRS 14A.9-030](#) unless the person produces the certificate within fourteen (14) days of the bid or proposal opening. Therefore, foreign entities should submit a copy of their certificate with their solicitation response. If the foreign entity is not required to obtain a certificate as provided in [KRS 14A.9-010](#), the foreign entity should identify the applicable exception in its solicitation response. Foreign entity is defined within [KRS 14A.1-070](#).

For all foreign entities required to obtain a certificate of authority to transact business in the Commonwealth, if a copy of the certificate is not received by the contracting agency within the time frame identified above, the foreign entity’s solicitation response shall be deemed non-responsive or the awarded contract shall be cancelled.

Businesses can register with the Secretary of State at <https://secure.kentucky.gov/sos/ftbr/welcome.aspx>

2.23-EEO ACT

The Equal Employment Opportunity Act of 1978 applies to All State government projects with an

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estimated value exceeding \$500,000. The Contractor shall comply with all terms and conditions of the Act, if applicable.

1. Failure to comply with the Act may result in non-award, withdrawal of award, cessation of contract payments, etc.
2. Vendors/Contractors must submit the following documents in accordance with the requirements of the solicitation—EEO-1: Employer Information Report, Affidavit of Intent to Comply and Subcontractor Report or a copy of the Kentucky EEO Approval Letter issued by the Finance and Administration Cabinet, Office of EEO and Contract Compliance.
3. Vendors/Contractors may obtain copies of the required EEO documents from the Finance and Administration Cabinet's e-Procurement Web page under Standard Attachments and General Terms at the following address:
<http://finance.ky.gov/SERVICES/FORMS/Pages/default.aspx>
4. Vendors/Contractors must advise each subcontractor/subvendor—with a subcontract of more than \$500,000—of the subcontractor's obligation to comply with the KY EEO Act. Further, Vendors/Contractors are responsible for compiling EEO documentation from their subcontractors/subvendors and submitting the documentation to the Finance and Administration Cabinet, Office of EEO and Contract Compliance. (Note: contracts below the second tier are exempt from EEO reporting.)
5. Failure to complete, sign and submit all required documents will delay the award process as incomplete submissions will not be processed. Further, alternate versions of the required documents will not be accepted or processed.
6. Pursuant to KRS 45.610 (2), the Finance and Administration Cabinet, Office of EEO and Contract Compliance reserves the right to request additional information and/or documentation and to conduct on-site monitoring reviews of project sites and/or business facilities at any point for the duration of any contract which exceeds \$500,000 to ascertain compliance with the Act and such rules, regulations and orders issued pursuant thereto.
7. All questions regarding EEO forms or contract compliance issues must be directed to the Finance and Administration Cabinet, Office of EEO and Contract Compliance via e-mail: Finance.ContractCompliance@ky.gov or via telephone: (502) 564-2874.

2.24—Prevailing Wage

If the federal government or any of its agencies furnishes by loans or grants any part of the funds used in constructing public works, and if the federal government or its agencies prescribe predetermined prevailing minimum wages to be paid to mechanics, workmen and laborers employed in the construction of the public works, and if KRS 337.505 to 337.550 is also applicable, those wages in each classification which are higher shall prevail.

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2.25—Kentucky Sales and Use Taxes

Sales of tangible personal property or services to the State of Kentucky and its agencies are not subject to state sales or use taxes.

2.26—Extension Period

This contract may be extended at the termination of all contract renewal periods for additional time not to exceed **90 days**. This extension must be accompanied by the written approval of the vendor and the Division of Purchases

2.27—Extending Master Agreement To Other Agencies

The Division of Purchases reserves the right, with the consent of the vendor, to offer this master agreement to other state agencies or political subdivisions who may have need for the product (s).

2.28—Access to Records

The contractor, as defined in KRS 45A.030 (9) agrees that the contracting agency, the Finance and Administration Cabinet, the Auditor of Public Accounts, and the Legislative Research Commission, or their duly authorized representatives, shall have access to any books, documents, papers, records, or other evidence, which are directly pertinent to this contract for the purpose of financial audit or program review. Records and other prequalification information confidentially disclosed as part of the bid process shall not be deemed as directly pertinent to the contract and shall be exempt from disclosure as provided in KRS 61.878(1)(c). The contractor also recognizes that any books, documents, papers, records, or other evidence, received during a financial audit or program review shall be subject to the Kentucky Open Records Act, KRS 61.870 to 61.884.

In the event of a dispute between the contractor and the contracting agency, Attorney General, or the Auditor of Public Accounts over documents that are eligible for production and review, the Finance and Administration Cabinet shall review the dispute and issue a determination, in accordance with Secretary's Order 11-004.

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SECRETARY'S ORDER 11-004

FINANCE AND ADMINISTRATION CABINET

Vendor Document Disclosure

WHEREAS, in order to promote accountability and transparency in governmental operations, the Finance and Administration Cabinet believes that a mechanism should be created which would provide for review and assistance to an Executive Branch agency if said agency cannot obtain access to documents that it deems necessary to conduct a review of the records of a private vendor that holds a contract to provide goods and/or services to the Commonwealth; and

WHEREAS, in order to promote accountability and transparency in governmental operations, the Finance and Administration Cabinet believes that a mechanism should be created which would provide for review and assistance to an Executive Branch agency if said agency cannot obtain access to documents that it deems necessary during the course of an audit, investigation or any other inquiry by an Executive Branch agency that involves the review of documents; and

WHEREAS, KRS 42.014 and KRS 12.270 authorizes the Secretary of the Finance and Administration Cabinet to establish the internal organization and assignment of functions which are not established by statute relating to the Finance and Administration Cabinet; further, KRS Chapter 45A.050 and 45A.230 authorizes the Secretary of the Finance and Administration Cabinet to procure, manage and control all supplies and services that are procured by the Commonwealth and to intervene in controversies among vendors and state agencies; and

NOW, THEREFORE, pursuant to the authority vested in me by KRS 42.014, KRS 12.270, KRS 45A.050, and 45A.230, I, Lori H. Flanery, Secretary of the Finance and Administration Cabinet, do hereby order and direct the following:

- I. Upon the request of an Executive Branch agency, the Finance and Administration Cabinet ("FAC") shall formally review any dispute arising where the agency has requested documents from a private vendor that holds a state contract and the vendor has refused access to said documents under a claim that said documents are not directly pertinent or relevant to the agency's inquiry upon which the document request was predicated.
- II. Upon the request of an Executive Branch agency, the FAC shall formally review any situation where the agency has requested documents that the agency deems necessary to conduct audits, investigations or any other formal inquiry where a dispute has arisen as to what documents are necessary to conclude the inquiry.
- III. Upon receipt of a request by a state agency pursuant to Sections I & II, the FAC shall consider the request from the Executive Branch agency and the position of the vendor or party opposing the disclosure of the documents, applying any and all relevant law to the facts and circumstances of the matter in controversy. After FAC's review is complete, FAC shall issue a Determination which sets out FAC's position as to what documents and/or records, if any, should be disclosed to the requesting agency. The Determination shall be issued within 30 days of receipt of the request from the agency. This time period may be extended for good cause.

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- IV. If the Determination concludes that documents are being wrongfully withheld by the private vendor or other party opposing the disclosure from the state agency, the private vendor shall immediately comply with the FAC's Determination. Should the private vendor or other party refuse to comply with FAC's Determination, then the FAC, in concert with the requesting agency, shall effectuate any and all options that it possesses to obtain the documents in question, including, but not limited to, jointly initiating an action in the appropriate court for relief.
- V. Any provisions of any prior Order that conflicts with the provisions of this Order shall be deemed null and void.